

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde,
M.A., LL.M.,
LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru

Dated on this 18th day of January 2023

COM.OS.No.1432/2022

- PLAINTIFFS:**
- 1.** Mrs. Sreelakshmi Kottu
W/o Mr.jagadeesh Sreenivas Kottu,
aged about 37 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.
 - 2.** Mr.Jagadeesh Sreenivas Kottu,
S/o Venkatarama Rao,
aged about 44 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.
 - 3.** Ms. Jai Vaishanavi Kottu,
represented by Legal Guardian
Mr. Jagadeesh Sreenivas Kottu,
aged about 9 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.

[By Sri. L.M, Advocate]

/v e r s u s/

- DEFENDANTS:**
- 1.** M/s.Elena Geo Systems Private Ltd

A company incorporated under the Companies Act, 1956/2013
CIN U72200KA2012PTC139939
having its Registered office at
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.

- 2.** Shanmugavelan Venkatachalam,
Director
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.
- 3.** Ms. Rajendran Naveena @
Ms.Naveena R Velan @
Ms.Naveen R,
Director
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.
- 4** Mr. Pradeep Kumar Juneja,
Major,
Shareholder of
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.
Mr.Jayawant Shivaji Patil,
- 5.** Major,
shareholder of
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.

[By Sri.G.V, Advocate]

ORDER ON I.A.No.II

This application under Order XXXIX Rule 1 and 2 of CPC is filed by the plaintiffs praying to restrain defendants No.1 to 3 from inviting any further investments in the form of debts until the sums owed to plaintiff No.1 are returned.

2. In the affidavit in support of the application, plaintiffs have stated that the defendants No.2 and 3 approached plaintiffs on behalf of defendant No.1 company, requesting investment into the 1st defendant company by projecting great future to the 1st defendant company and promising great return. It is stated that as per the representation and assurance that the funds infused by the plaintiffs would be utilized to advance and foster the growth of the defendant No.1 company, 2nd plaintiff decided to invest in the 1st defendant company to the extent of Rs.2 crore for 30% shareholding and share purchase agreement was entered on 1/6/2019. It is stated that subsequently, defendants No.2 and 3 approached plaintiff No.1 seeking capital infusion and plaintiff No.1 by believing the representation of defendants No.2 and 3 and the assurance that the investment shall be solely utilized for the business operation of the company and for the revival of the company, invested Rs.1 crore by purchasing optionally fully convertible debentures and OFCD subscription agreement was entered on 18/11/2021. Plaintiffs have stated that the amount invested by plaintiff No.1 was required to be used for furtherance of the business of the 1st defendant company, but

the defendants have withdrawn amount of Rs.48 lakhs as remuneration for defendants No.2 and 3 fraudulently and in complete derogation of the OFCD subscription agreement and have siphoned the funds. According to the plaintiffs, they have even given complaint to the police against defendants No.2 and 3 and have also made formal written representation regarding return of amounts, but defendants No.2 and 3 have unilaterally passed resolution stating that the investment of plaintiff No.1 shall be returned one year later subject to funds being available with the company. The defendants have refused to return the amount invested by the plaintiff No.1. In these peculiar circumstances, it is stated that, the previous conduct of the defendants show that they used the monies from the account of the defendant No.1 company for their personal gains and no further loans in the form of debt should be obtained by defendant No.1 company, since this would result in creation of additional charges on the assets of the company. It is stated that, plaintiff No.1 has extended Rs.1 crore to the 1st defendant company and the 1st defendant company has not returned the amount and they have also not created any charge on the asset of the company securing the loan. Hence, it is stated that defendants are to be restrained from creating additional charge over assets. It is stated that the apprehension of the plaintiffs is very reasonable and if the application is not allowed, plaintiffs would suffer irreparable injury.

3. Objection is filed stating that the plaintiffs intend to restrain the defendants from inviting any further investment in the form of debts until the sums owed to plaintiff No.1 is restrained and such relief is unsustainable and unreasonable as it is not connected to the relief prayed in the suit. It is stated that the application is filed only to harass the defendants. It is stated that the application is not in respect of any property in dispute, but on potential investment that may be taken by the defendant No.1 company and same is beyond the scope of the provisions of Order XXXIX rule 1 of CPC. It is also stated that the relief also cannot be termed as continuance of breach and hence Order XXXIX rule 2 of CPC is also not applicable. It is stated that there is no money owed and due by the defendant No.1 as on date. It is stated that Optionally fully convertible debentures are not due for payment as on date and the OFCDs were allotted on 11/2/2022 and carry maturity period of 5 years which is upto February 2027. It is stated that, plaintiff No.1 can be aggrieved only if default in payment occurs in the year 2027 and not prior to that. It is stated that the defendant No.1 is engaged in the activity of developing satellite navigation technologies and other solutions and it caters mainly to defense sector and the defendant No.1 company is emerging as one of the major suppliers to defense manufacturers in the nation in its domain and is actively involved in executing several major contracts with several public sector undertakings including Bharat Electronics Limited. It is

stated that defendant No.1 is in growth phase and requires funding both equity and debt for its business expansion and restraining the defendants from accessing any further investment would impede the growth plans of the company and prejudice the business and its prospects and consequently cast hardship on all the shareholders. It is stated that if the prayer to restrain further investments is allowed, it would lead to untold hardship and irreparable damage to the defendants. It is stated that the balance of convenience is in favour of the defendants. On all these grounds, application is prayed to be dismissed.

4. Now the points that arise for my consideration are:

1. Whether the plaintiffs have made out prima facie case for grant of temporary injunction?

2. In whose favour balance of convenience lies?

3. Who will suffer irreparable injury, if temporary injunction is granted or refused?

4. What order?

5. Heard both counsels. Perused records.

6. My answer to the above points are :

Point No.1 : In the Affirmative.

Point No.2 : In favour of Plaintiff No.1.

Point No.3 : Plaintiff No.1 will suffer irreparable injury, if TI is not granted.

Point No.4 : As per final order for the following:

REASONS

7. Points No.1 to 3: Since these three points are interlinked with each other, they are taken together for discussion, to avoid repetition.

8. Plaintiffs have filed this suit seeking several reliefs including the relief to declare that the defendants are in collective breach of OFCD subscription agreement dated 18/11/2021 and to direct the defendants to return the investment in the form of debentures made by plaintiff No.1 under OFCD subscription agreement along with coupon rate with interest. The plaintiff No.1 has filed present application in I.A.No.II praying to restrain the defendants No.1 to 3 from inviting any further investment in the form of debt until the amount owed to the plaintiff No.1 are returned. On looking to the plaint averments, case of the plaintiffs is that on the representation of defendants No.2 and 3 who are the directors of defendant No.1, plaintiff No.2 has entered into share purchase agreement by agreeing to invest Rs.2 crore and has paid Rs.65 lakhs and has also become the director of the defendant No.1 company. According to the plaintiffs, the defendants No.2 and 3 have also persuaded the plaintiff No.1 to make investment in 1st defendant company by assuring that, the amount so invested would be utilized for furtherance of the business and as decided by the board. According to the plaintiff, OFCD subscription agreement was entered on 18/11/2021 between the plaintiff No.1 and defendant No.1 and the plaintiff No.1 has invested Rs.1 crore in the 1st

defendant company and OFCDs are allotted to plaintiff No.1. Investment made by the plaintiff No.1 is for development of the business of the 1st defendant. According to the plaintiffs, she had undertook to invest Rs.3 crore in two stretches and she has invested Rs.1 crore, out of total agreed amount of investment.

9. According to the plaintiff, defendant No.1 company has not created any charge on the assets of 1st defendant for the debentures issued to plaintiff No.1 and violated statutory rights of the plaintiff No.1 as secured credit. It is also contended that the acts of the defendants No.2 and 3 to keep the assets unsecured are a result of the malafide intention of the defendants and the plaintiff No.1 contended that soon after her investment, defendants No.2 and 3 have withdrawn an amount of Rs.48 lakhs as remuneration from the 1st defendant company and this is in complete derogation of OFCD and defendants have siphoned the funds invested by plaintiff No.1. According to the plaintiffs, the plaintiff No.1 had objected for the same and has also sought return of the amount and she has given complaint to the police wherein she was asked to submit formal request letter for return of her investment amount. The plaintiff has stated that the defendants No.2 and 3 insisted the personal appearance of the plaintiffs seeking return of the amount and the plaintiff submitted representation and the defendant No.1 has passed a resolution stating that the amount would be returned in one year on certain conditions. In the presence of these facts

stated in the plaint, plaintiff No.1 contends that the activities of the defendant No.1, as conducted by defendants No.2 and 3, do not show that plaintiffs amount would be utilized for the benefit of company as required. According to plaintiff, activities of defendants No.2 and 3 in receiving the directors remuneration of Rs.48 lakhs out of the investment amount, show that the funds are siphoned by defendants No.2 and 3 and her amount of investment has become unsecured. The plaintiffs now apprehends that the defendants No.2 and 3 may obtain further investment in the form of debts in the name of defendant No.1 company and such loans and debts would result in creation of additional charges on the assets of the company. Therefore, until the investment amount is returned, the plaintiff No.1 is seeking an order to restrain the defendants No.1 to 3 from inviting any further investment in the form of debts till return of amount to plaintiff No.1. The defendants in the objection have stated that for growth of the business, defendant No.1 may have to invite investment and if order is passed, it would impede the growth plan of the company and prejudice the business prospects and would cause hardship to all the shareholders.

10. On looking to the documents produced and the contention taken by both the parties, investment of Rs.1 crore by plaintiff in the 1st defendant company on the basis of OFCD subscription agreement dated 18/11/2021 is not disputed by the defendants No.1 and 2 who have appeared in this case. As per the OFCD subscription agreement, totally

Rs.3 crores was to be invested by plaintiff No.1. Out of it, she has invested Rs.1 crore. According to the plaintiffs, defendants No.2 and 3 have withdrawn portion of this investment amount as remuneration which is against the terms of OFCD agreement. Whether the OFCD subscription agreement terms are breached by the defendants or by plaintiffs and whether the investment in the OFCD made by the plaintiff No.1 would mature only after 5 years and before that, she has no right to seek return of the said amount etc may have to be decided in the course of trial. As admitted, plaintiff No.1 has invested Rs.1 crore in the 1st defendant company and she is allotted OFCDs. According to the plaintiff No.1 her investment has not become secured and though she has asked for return of the amount by considering further developments, defendants have postponed the payment. Hence, plaintiff No.1 interested in protecting her investment by not allowing delusion of the assets of the 1st defendant by obtaining further debt. As receipt of the amount of Rs.38 lakhs towards remuneration by defendant No.2 and 3, as alleged by the plaintiffs is not denied by defendants No.1 and 2 and plaintiff has also alleged that another amount of Rs.48 lakhs is also withdrawn from the said account by defendant No.1 company under some other heads, plaintiff No.1 has made out prima-facie case to restrain the defendants from inviting further investments in the plaintiff company by way of debt.

11. In the objection, though the defendants have stated that such a restraint order would impede growth plan of the company and would prejudice the business and its prospects, defendants have not stated that they are in need of investment or debt and that they are in consultation with some third parties to secure such investment. The relief prayed by the plaintiffs in this I.A. is only to restrain the defendants NO.1 to 3 from inviting any further investment in the form of debt until her amount is returned. As rightly stated in the affidavit, if the amount is received by defendant No.1 company as investment from some third parties in the form of debts, then, that would create additional charge on the assets of the company and would cause injury to the plaintiff No.1 and plaintiffs investment will be deluted. As the amount invested by the plaintiff No.1 is for development of the business and plaintiff has alleged violation of such condition of the OFCD agreement and the defendant No.1 even appears to have passed resolution for return of the amount within one year to the plaintiff No.1, till return of the amount to the plaintiff No.1, it is proper to restrain the defendants from inviting any further investment in the form of debts. If such an order is not passed and the defendants secures further investment in the form of debts to the 1st defendant company, then additional charge would be created on the assets of the company and would cause serious prejudice to the interest of the plaintiff No.1. As OFCD agreement contains maturity period of 5 years, amount

already invested by plaintiff No.1 would have to be secured and in the event of further investment by way of debt being received, it would cause serious prejudice to the interest of plaintiff No.1.

12. On considering all these facts, plaintiff No.1 has made out prima facie case for granting order of temporary injunction against defendants No.1 to 3 from inviting any further investment in the form of debts. In the present case the defendants No.1 and 2 have only appeared so far and the summons to defendants No.3 to 5 are not yet served. Hence right of defendant No.3 to challenge the order under Order 39 Rule 4 CPC would not be affected. As there is no any specific contention of the defendants about they being in consultation with any new investors, balance of convenience is in favour of granting order of temporary injunction as payed in IA No.II. If such an order is not passed irreparable injury will be caused to the plaintiff No.1. Since the order prayed is not an unconditional order and is only to restrain the defendants No.1 to 3 from inviting further investment in the form of debts and only till the amount owed to the plaintiff No.1 are returned, defendants No.1 to 3 will not suffer any injury. On considering all these aspects, it is a fit case for grant of temporary injunction on I.A.No.II. Accordingly, points No.1 to 3 are answered.

13. POINT No.4 : For the discussion made on above points, following order is passed:

ORDER

I.A.No.II filed by Plaintiffs, under Order XXXIX Rule 1 and 2 of CPC is allowed.

By an order of temporary injunction, defendants No.1 to 3 are restrained from inviting any further investment in the form of debts in favour of defendant No.1, before returning the investment amount of plaintiff No.1, till further orders.

[Dictated to the Judgment Writer; transcript thereof corrected, signed and then pronounced by me, in the Open Court on this the 18th day of January 2023]

**[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.**
